

SENATE BILL NO. 120  
INTRODUCED BY J. ELLIOTT  
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE TAXATION OF REAL ESTATE INVESTMENT TRUSTS; PROVIDING A TAX CREDIT FOR THE MARKET VALUE OF REAL PROPERTY CONTRIBUTED TO THE STATE OF MONTANA BY A REAL ESTATE INVESTMENT TRUST; CONFORMING MONTANA'S TAXATION LAWS WITH THE INTERNAL REVENUE CODE REGARDING THE TREATMENT OF QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARIES AS DISREGARDED ENTITIES; PROVIDING AN EXCLUSION, UNDER CERTAIN CONDITIONS, FROM THE ADJUSTED GROSS INCOME OR FROM THE CORPORATE GROSS INCOME OF SHAREHOLDERS AND HOLDERS OF BENEFICIAL INTERESTS OF REAL ESTATE INVESTMENT TRUSTS FOR DIVIDENDS RECEIVED FROM A REAL ESTATE INVESTMENT TRUST; PROVIDING FOR THE DETERMINATION OF THE NET INCOME OF REAL ESTATE INVESTMENT TRUSTS; DISALLOWING THE DIVIDENDS PAID DEDUCTION ALLOWED UNDER THE INTERNAL REVENUE CODE IN DETERMINING THE TAXABLE INCOME OF A REAL ESTATE INVESTMENT TRUST; CLARIFYING, IN ACCORDANCE WITH THE INTERNAL REVENUE CODE, THAT A DEDUCTION FOR DIVIDENDS RECEIVED FROM A REGULATED INVESTMENT COMPANY OR A REAL ESTATE INVESTMENT TRUST IS NOT ALLOWED; CLARIFYING THAT ALL TAXABLE INCOME OF A REAL ESTATE INVESTMENT TRUST IS TAXED AT THE CORPORATE LICENSE TAX RATE; CLARIFYING THE CALCULATION OF THE NET OPERATING LOSS OF A REAL ESTATE INVESTMENT TRUST; ALLOWING THE BOARD OF LAND COMMISSIONERS TO ACCEPT UNRESTRICTED DONATIONS OF REAL PROPERTY FROM REAL ESTATE INVESTMENT TRUSTS; AMENDING SECTIONS 15-30-101, 15-30-111, 15-31-113, 15-31-114, 15-31-119, 15-62-207, 15-62-208, AND 77-1-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Credit for real estate investment trust contribution of real property to the state.** (1) Except as provided in subsection (4), a real estate investment trust is allowed a credit against taxes otherwise due under this chapter for the fair market value of real property contributed to the state that is accepted by the board of land commissioners as provided in 77-1-213 or 77-1-214.

(2) The amount of the credit is equal to 100% of the fair market value of the property as determined under 77-1-202(3).

(3) If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 3 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(4) The credit allowed under this section may not be claimed if the real estate investment trust has claimed the contribution as a deduction under 15-31-114.

**Section 2.** Section 15-30-101, MCA, is amended to read:

**"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable~~ tax year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable~~ tax year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the ~~taxable~~ tax year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, {26 U.S.C. 1362}, is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity that is:

(a) ~~that is~~ disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as

those regulations may be labeled or amended; ~~or~~

(b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, ~~(26 U.S.C. 1361(b)(3)); or~~

(c) a qualified real estate investment trust subsidiary that is not treated as a separate corporation as provided in section 856 of the Internal Revenue Code, 26 U.S.C. 856.

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, ~~(26 U.S.C. 61); or as that section may be labeled or amended,~~ excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, ~~(26 U.S.C. 85) as amended.~~

(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(14) "Knowingly" ~~is as defined~~ has the meaning provided in 45-2-101.

(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" ~~means a limited liability partnership as defined~~ has the meaning provided in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this

chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, {26 U.S.C. 401}, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, {26 U.S.C. 401 through 408}, to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" ~~is as defined~~ has the meaning provided in 45-2-101.

(27) "Real estate investment trust" means a real estate investment trust as defined in section 856 of the Internal Revenue Code, 26 U.S.C. 856.

~~(28)~~ (29) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(28)~~(29) "Resident" ~~applies only to~~ means a natural persons person and includes, for the purpose of

determining liability to the tax imposed by this chapter with reference to the income of any ~~taxable tax~~ year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(29)~~(30) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, ~~{26 U.S.C. 1362}~~, is in effect.

~~(30)~~(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(31)~~(32) "Tax year" means the taxpayer's ~~taxable tax~~ year for federal income tax purposes.

~~(32)~~(33) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(33)~~ 34 (a) "Taxpayer" ~~includes~~ means any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter.

~~(b) and unless otherwise specifically provided~~ The term does not include a C. corporation unless specifically provided by this chapter."

**Section 3.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law; and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law; and

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii)(1)(a)(ii)(B);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by ~~persons~~ a person for rendering services ~~rendered by them~~ to patrons of premises licensed to provide food, beverage, or lodging;



- (g) all benefits received under the workers' compensation laws;
  - (h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;
  - (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
  - (j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
  - (k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;
  - (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;
  - (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
  - (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;
  - (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;
  - (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.
  - (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; ~~and~~
  - (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and
  - (s) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-113 and 15-31-114.
- (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall

include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.~~

~~(8)~~(7) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the

contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

~~(9)(8)~~ (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(9)(b)~~ (8)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

**Section 4.** Section 15-31-113, MCA, is amended to read:

**"15-31-113. Gross income, and net income, and real estate investment trust income defined -- computation of gross income of corporations not exempt from taxation.** (1) For the purposes of this chapter, the following definitions apply:

~~(1)(a)~~ (i) ~~The term "gross income"~~ "Gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes ~~and~~ increased as provided in subsection (1)(a)(ii) and decreased as provided in subsection (1)(a)(iii).

~~(a)(ii)~~ including: The following items are included in determining a corporation's gross income:

~~(i)(A)~~ interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5) ~~as that section may be amended or renumbered;~~ and

~~(ii)(B)~~ the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337, ~~as those sections may be amended or renumbered;~~ attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; ~~and~~

~~(b)(iii)~~ excluding The following items are excluded in determining a corporation's gross income:

(A) the gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, 26 U.S.C. 331 through 337, as those sections may be amended or renumbered; when the gain is required to be recognized by the liquidating corporation pursuant to subsection ~~(1)(a)(ii)~~ (1)(a)(ii)(B) of this section; ~~and~~

(B) dividends received from a real estate investment trust to the extent they are taxed in Montana as provided in 15-31-114 and this section.

(b) "Internal Revenue Code" has the meaning provided in 15-30-101.

~~(2)(c)~~ (i) The term "net income" "Net income", except as provided in subsection (1)(c)(ii), means the gross income of the corporation less the deductions set forth in 15-31-114.

(ii) If a corporation is taxed as a real estate investment trust as provided in sections 856 through 859 of the Internal Revenue Code, 26 U.S.C. 856 through 859, the term means real estate investment trust income.

(d) "Real estate investment trust income" means real estate investment trust taxable income, as defined in section 857(b)(2) of the Internal Revenue Code, 26 U.S.C. 857(b)(2), modified as follows:

(i) the exclusion for an amount equal to the net income from foreclosure property provided for in section 857(b)(2)(D) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(D), is not allowed;

(ii) the deduction for an amount equal to the tax imposed for failure to meet certain requirements for the tax year provided for in section 857(b)(2)(E) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(E), is not allowed;

(iii) the exclusion for an amount equal to any net income derived from prohibited transactions provided for in section 857(b)(2)(F) of the Internal Revenue Code, 26 U.S.C. 857(b)(2)(F), is not allowed; and

(iv) the deduction for dividends paid provided for in section 561, 858, or 860 of the Internal Revenue Code, 26 U.S.C. 561, 858, or 860, or in any other section of the Internal Revenue Code is not allowed.

~~(3)(2)~~ A corporation is not exempt from the corporation license tax unless specifically provided for under

15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the ~~taxable tax~~ tax year."

**Section 5.** Section 15-31-114, MCA, is amended to read:

**"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the ~~taxable tax~~ tax year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this ~~section~~ subsection (1)(a), and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the ~~taxable tax~~ tax year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the ~~taxable tax~~ tax period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable tax~~ tax year. All elections made under the

Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part ~~must be construed to~~ include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, ~~as amended~~.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), ~~as that section may be amended or renumbered~~, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, ~~as that section may be amended or renumbered~~, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, ~~as those sections may be amended or renumbered~~, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, ~~as those sections may be amended or renumbered~~.

(4) A deduction is not allowed for any dividend received from:

(a) a regulated investment company including, without limitation:

(i) a capital gains dividend as defined in section 852(b)(3) of the Internal Revenue Code, 26 U.S.C. 852(b)(3); and

(ii) any amount treated as a dividend under section 854(b) of the Internal Revenue Code, 26 U.S.C. 854(b); and

(b) a real estate investment trust including, without limitation:

(i) a capital gain dividend as defined in section 857(b)(3)(C) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(C);

(ii) a capital gain dividend treated by the shareholder or holder of a beneficial interest in a real estate investment trust as a gain from the sale or exchange of a capital asset held for more than 1 year as described in section 857(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(B); and

(iii) the amount designated by a real estate investment trust and includable in computing the long-term capital gains of a shareholder or holder of a beneficial interest as described in section 857(b)(3)(D) of the Internal Revenue Code, 26 U.S.C. 857(b)(3)(D)."

**Section 6.** Section 15-31-119, MCA, is amended to read:

**"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable tax period plus the net operating loss carrybacks to the taxable tax period.

(2) ~~(a)~~ Except as provided in subsection (2)(b), the term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection ~~(6)~~ (5).

(b) The net operating loss of a real estate investment trust must be computed with the adjustments provided in 15-31-113(1)(d).

~~(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.~~

~~(4)(3)~~ A net operating loss for any taxable tax period ~~ending after December 31, 1975,~~ in addition to being a net operating loss carryback to each of the three preceding taxable tax periods, must be a net operating loss carryover to each of the seven taxable tax periods following the taxable tax period of the loss.

~~(5)(4)~~ Except as provided in subsection ~~(4)~~ (10), the portion of the loss that must be carried to each of the other taxable tax years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable tax periods to which the loss was carried. For purposes of this subsection, the net income for the prior taxable tax period must be computed with the modification specified in subsection ~~(6)(b)~~ (5)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable tax period after the loss period, and the net income ~~so~~ that is computed may not be considered to be less than zero.

~~(6)(5)~~ The modifications referred to in subsection ~~(2)~~ (2)(a) are as follows:

(a) The net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Except to the extent provided in section 1382(b) of the Internal Revenue Code, 26 U.S.C. 1382(b), a deduction for dividends paid or considered paid is not allowed.

(d) Any net operating loss carried over to any taxable tax year must be calculated under the provisions of this section effective for the taxable tax year for which the return claiming the net operating loss carryover is



filed.

~~(7)(6)~~ A net operating loss deduction may be allowed only with regard to losses attributable to the business carried on within the state of Montana.

~~(8)(7)~~ In the case of a merger of corporations, the surviving corporation ~~may~~ is not ~~be~~ allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity ~~may~~ is not ~~be~~ allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

~~(9)(8)~~ Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

~~(10)(9)~~ The net operating loss deduction must be allowed with respect to ~~taxable~~ tax periods.

~~(11)(10)~~ A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

~~(12)(11)~~ Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code ~~of 1986, as that section may be amended or renumbered,~~ 26 U.S.C. 851(a) or 851(b)."

**Section 7.** Section 15-62-207, MCA, is amended to read:

**"15-62-207. Deductions for contributions.** An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)(7)~~, by the total amount of the contributions, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident."

**Section 8.** Section 15-62-208, MCA, is amended to read:

**"15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111~~(8)(7)~~.

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross

income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

- (a) April 30, 2001; or
- (b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

**Section 9.** Section 77-1-213, MCA, is amended to read:

**"77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state.** (1) (a) The board ~~is hereby authorized and empowered to~~ may accept on behalf of the state from any ~~natural person~~

~~individual gifts, donations, grants, legacies, and devises having a value of not less than \$250 from each person. All lands passing to acquired by the state under these the provisions of this section or through the operation of as provided by law shall must be managed as other state lands, and the Subject to subsection (1)(b), the rents and earnings shall from the land must be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.~~

(b) The board may accept on behalf of the state from any real estate investment trust any unrestricted gift, donation, or grant of real property having a value of not less than \$250. All land passing to the state under this subsection (1)(b) or as provided by law must be managed as other state lands.

~~(2) All Subject to subsection (1)(b), all money realized from the sale of such the lands and from other property and all gifts, donations, grants, legacies, and devises made in money or the equivalent of money shall other consideration must be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated provided by this title. The provisions of this This section shall apply applies to gifts, donations, grants, legacies, and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received."~~

NEW SECTION. Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 12. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

- END -

